

### **C. REMARKS**

The Examiner is thanked for the performance of a thorough search. By this amendment, Claims 1-23 have been canceled and new Claims 24-63 added. Hence, Claims 24-63 are pending in this application. The new claims do not add any new matter to this application. Furthermore, the new claims are presented to improve readability and clarity, and not for any reason related to patentability. All issues raised in the Office Action mailed August 4, 2004 are addressed hereinafter.

### **OBJECTION TO ABSTRACT**

The abstract was objected to for exceeding 150 words in length. The abstract has been amended as indicated herein and now satisfies the 150 word maximum limit. In view of the amendments to the abstract made herein, reconsideration and withdrawal of the objection to the abstract is respectfully requested.

### **DOUBLE PATENTING**

Claims 1-23 were rejected under the judicially-created doctrine of obviousness-type double patenting as being unpatentable over Claims 9-30 of U.S. Patent No. 6,252,855. Although Claims 1-23 have been canceled, a proper terminal disclaimer complying with 37 CFR 3.73(b) is filed herewith to avoid a similar rejection of new Claims 24-63.

### **REJECTION OF CLAIMS 1-3 AND 23 UNDER 35 U.S.C. § 102(b)**

Claims 1-3 and 23 were rejected under 35 U.S.C. § 102(b) as being anticipated by *Shikama et al.*, U.S. Patent No. 5,513,172 (hereinafter "*Shikama*"). This rejection is now moot with respect to Claims 1-3 and 23 in view of the cancellation of Claims 1-3 and 23. New Claims 24-63 are distinguished over *Shikama* hereinafter.

### **REJECTION OF CLAIMS 4-6 UNDER 35 U.S.C. § 103(a)**

Claims 4-6 were rejected under 35 U.S.C. § 103(a) as being unpatentable over *Shikama*. This rejection is now moot with respect to Claims 4-6 in view of the cancellation of Claims 4-6. New Claims 24-63 are distinguished over *Shikama* hereinafter.

### **REJECTION OF CLAIMS 7-22 UNDER 35 U.S.C. § 103(a)**

Claims 7-22 were rejected under 35 U.S.C. § 103(a) as being unpatentable over *Blasbalg*, U.S. Patent No. 4,771,391. This rejection is now moot with respect to Claims 7-22 in view of the cancellation of Claims 7-22. New Claims 24-63 are distinguished over *Blasbalg* hereinafter.

### **NEW CLAIMS 24-63**

It is respectfully submitted that new Claims 24-63 are patentable over *Shikama* and *Blasbalg*, considered alone or in combination, for at least the reasons set forth hereinafter.

#### **CLAIM 24**

Claim 24 recites a computer-implemented method for determining a maximum frame size for an endpoint device in a frame relay network that requires:

“selecting a shortest acceptable delay value from two or more acceptable delay values associated with two or more originating network devices that are to use the endpoint device to send information over the frame relay network;  
and  
determining the maximum frame size for the endpoint device based upon the selected shortest acceptable delay value and a speed value of a physical connection connected to the endpoint device.”

*Shikama* describes a frame relay mechanism that dynamically varies the amount of buffering (in some cases none) based upon the frame length of received data and the transmission rates of the input and output signals. *Shikama* does not teach or suggest, however,

determining a maximum frame size for an endpoint device as recited in Claim 1. In particular, *Shikama* does not teach or suggest “selecting a shortest acceptable delay value from two or more acceptable delay values associated with two or more originating network devices that are to use the endpoint device to send information over the frame relay network” and then “determining the maximum frame size for the endpoint device based upon the selected shortest acceptable delay value and a speed value of a physical connection connected to the endpoint device.”

*Blasbalg* describes a mechanism for adaptively controlling the length of packets transmitted by nodes in a network based upon the average information flow rate in the network. The average information flow rate in a network is measured and a resultant packet length value is computed based upon the measured information flow rate. As the average information flow rate increases, the packet length is increased to reduce delays. *Blasbalg* does not teach or suggest determining a maximum frame size for an endpoint device by “selecting a shortest acceptable delay value from two or more acceptable delay values associated with two or more originating network devices that are to use the endpoint device to send information over the frame relay network” and then “determining the maximum frame size for the endpoint device based upon the selected shortest acceptable delay value and a speed value of a physical connection connected to the endpoint device.”

In view of the foregoing, it is respectfully submitted that Claim 1 recites one or more limitations that are not taught or suggested by *Shikama* and *Blasbalg*, considered alone or in combination, and that Claim 1 is therefore patentable over *Shikama* and *Blasbalg*.

#### CLAIMS 25-33

Claims 25-33 all depend from Claim 24 and include all of the limitations of Claim 24. It is therefore respectfully submitted that Claims 25-33 are patentable over *Shikama* and *Blasbalg* for at least the reasons set forth herein with respect to Claim 24. Furthermore, it is respectfully submitted that Claims 25-33 recite additional limitations that independently render them patentable over *Shikama* and *Blasbalg*.

#### CLAIMS 34-43

Claims 34-43 recite limitations similar to Claims 24-33, except in the context of computer-readable media. It is therefore respectfully submitted that Claims 34-43 are patentable over the cited references for at least the reasons set forth herein with respect to Claims 24-33.

#### CLAIMS 44-53

Claims 44-53 recite limitations similar to Claims 24-33, except in the context of apparatuses. It is therefore respectfully submitted that Claims 44-53 are patentable over the cited references for at least the reasons set forth herein with respect to Claims 24-33.

#### CLAIMS 54-63

Claims 54-63 recite limitations similar to Claims 24-33, except in the context of apparatuses. It is therefore respectfully submitted that Claims 54-63 are patentable over the cited references for at least the reasons set forth herein with respect to Claims 24-33.

In view of the foregoing, it is respectfully submitted that new Claims 24-63 each include one or more limitations that are not taught or suggested by *Shikama* or *Blasbalg* and that new Claims 24-63 are therefore patentable over *Shikama* and *Blasbalg*.

## CONCLUSION

It is respectfully submitted that all of the pending claims are in condition for allowance and the issuance of a notice of allowance is respectfully requested. If there are any additional charges, please charge them to Deposit Account No. 50-1302.

The Examiner is invited to contact the undersigned by telephone if the Examiner believes that such contact would be helpful in furthering the prosecution of this application.

Respectfully submitted,

HICKMAN PALERMO TRUONG & BECKER LLP



Edward A. Becker

Reg. No. 37,777

Date: October 28, 2004


1600 Willow Street  
San Jose, CA 95125  
(408) 414-1204  
Facsimile: (408) 414-1076

### CERTIFICATE OF MAILING

I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail in an envelope addressed to: **Mail Stop Amendment**, Commissioner for Patents, P. O. Box 1450, Alexandria, VA 22313-1450

on October 28, 2004

by



Angelica Maloney